IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.819 OF 1981

The Cotton Corporation of India Ltd. ..Plaintiffs

Vs.

The Periyar Distrist Cooperative Spinning Mills Ltd. ..Defendants

Mr.R.C.Shah with Mr.U.Mahajan i/b M/s.Divekar & Co. for the plaintiffs

Mr.M.S.Patel for the defendants

CORAM : S.U.KAMDAR, J

DATED : 19TH JULY 2005

P.C.:

1. The present suit has been filed for the recovery of Rs.7,66,983.10 with interest @ 20% p.a. Some of the material facts of the present case are as under:

2. By telegram dt.29.4.77 the defendant informed the plaintiff that they had approved the samples of California / Arizona and Sudan Cotton at the plaintiffs office at Coimbatore and they

requested the plaintiffs to send the contract for sale and purchase of 200 bales of each type for June-July shipment and agreed to furnish bank guarantee for the same.It is the case of the plaintiffs that pursuant thereto the plaintiffs sent to the defendants the Contract bearing no.G/620 dt.12.5.77 in duplicate duly signed by the plaintiffs to enable the defendants to return one copy duly signed by them. Clause 33 of the said contract interalia provided that if the plaintiffs did not accept the said contract duly signed within a period of 7 days then in that event the said contract will be deemed to be accepted and the terms and conditions of the contract will be operated upon.

3. It is an admitted position that the defendants did not return the duplicate copy duly signed by them. Subsequent correspondence was referred to between the parties thereafter and it indicates that the defendants have thereby accepted the said contract No.G/620 dt.12.5.77 and agreed to buy from the plaintiffs 200 bales of California/Arizone cotton at the price of

Rs.5,050/- per candy. The defendants thereafter by letter dt. 28.5.77 informed the plaintiffs that they have received quota of 200 bales and they will take necessary action to lift the delivery from the defendants. On 2.7.77 the plaintiffs informed the defendants that 163 bales of Arizona Cotton were shipped per S.S.Vishvaprayas by the foreign suppliers from California to Cochin. The defendants by letter dt.1.7.77 addressed to the Chief Cotton Development Officer of All India Federation of Co-operative Spinning Mills Ltd., Bombay interalia stating that they had received an allotment of 200 bales of California/ Arizona Cotton under another contract but due to financial difficulties in obtaining Bank Guarantee as well as adequate stock of imported cotton they were unable to import the said cotton as per the quota allotted to them. They further requested the Federation to arrange for re-allotment thereof to any other sister Co-operative Spinning Mills. Ultimately, the goods arrived at the port of Cochin but the defendants failed to take delivery thereon. In the aforesaid circumstances, plaintiffs was required to clear the goods and store them in their godown.

The plaintiffs thereafter by their Advocates' letter dt.20.9.77 called upon the defendants to take delivery of 163 bales within 15 days failing which the plaintiffs threatened the defendants to adopt appropriate legal proceedings against them. The defendants however, interalia contended that in view of the fact that they never accepted the contract being G/620, they are not liable under the said contract and therefore, they are not liable to make payment thereof. The goods were subsequently sold by the plaintiffs to the Vijayalaxmi Mills on 20.11.79 and partly on 21.4.80 the plaintiffs realised the sum of Rs.3,22,980.53. The invoice price of the said 163 bales was Rs.9,89,866.88. The plaintiffs thus suffered a loss of Rs.6,66,886.30. The plaintiffs has filed the present suit for the recovery of the aforesaid amount with interest @ 20% p.a. The plaintiffs has filed compilation of documents which is marked as Ex.P-2 to Ex.P-43. Plaintiffs has also filed affidavit of evidence of K. S.Sheshadri in support of his case. Issues were framed in this court on 31-1-00 which are as under:

1. Whether the defendants prove that the suit is barred by Law of Limitation?

2. Whether the plaintiffs prove that there was conclusive binding contract between the plaintiffs and the defendants for sale of suit cotton?

3. Whether the plaintiffs prove that the defendants committed breach of the contract by not taking delivery of the suit cotton?

4. Whether the plaintiffs prove that the plaintiffs suffered loss of Rs.7,66,983.10 ps. on account of breach of the Contract on the part of the defendants and that the plaintiffs are entitled to the said amount with interest thereon as claimed in the suit?

5. What relief?

4. The learned counsel for the defendants have filed written statement in which they have interalia disputed the liability essentially on the ground that the contract being not accepted they are not liable for the payment of the said amount. The learned counsel for the defendants has cross-examined the witness of the plaintiffs in part. However, today at the hearing of the matter, the learned counsel for the defendants states that he is unable to proceed with the matter and continue with cross-examination in view of the fact that he has no instructions in the matter. He

produces the letter dt.15.4.05 addressed by him to the defendants seeking instructions from his client and states that no instructions are received. Thus, the cross-examination cannot be continued and cross-examination is closed.

5. The learned counsel for the plaintiffs has contended that on the documents which are produced on record it is established that there is a contract between the parties between i.e. plaintiffs and the defendants and the clause 33 of the contract interalia provides for acceptance thereof even by non-communication. In any event, it has been contended that the contract has been accepted by the defendants by the series of correspondence between the parties and thus, this court should decree the suit in view of the fact that the documents which have come on record at Ex.P-2 to P-43. I have considered the evidence on record in overall view of the oral evidence which is not controverted on the material part nor the defendants have stepped into the witness box, I am required to accept the case of the plaintiffs. Documents which are produced before me indicates

that there has been consistent correspondence and from time to time defendants agreed to purchase the said cotton and in respect thereof he has addressed various letters including letter dt.30.3.05. It is also an admitted position that infact the defendants themselves by telegram placed an order for the purchase of 200 bales of cotton from the plaintiffs herein.

6. In the light of the evidence which is before me, it is clear that the case of the plaintiffs is established. The plaintiffs have also proved that the goods have been sold and part amount is recovered. The said sale was as and by way of mitigating the losses and thus, the plaintiffs are entitled to balance amount of Rs.7,66,983.10 as loss suffered by them. In so far as interest is concerned, the learned counsel for the plaintiffs submits that the same is left to the court since it is claimed for a period subsequent to the date of the suit. I am of the opinion that looking at the circumstances of the case, plaintiffs are entitled to interest @ 9% p.a. Suit is accordingly decreed as under:

7. There shall be decree in favour of the plaintiffs and against the defendants for the sum of Rs.7,66,98.10 with interest @ 9% p.a. from the date of the suit till payment and / or realisation. However, there shall be no order as to costs.